IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 36 OF 1994

The Commissioner of Income-tax,
Bombay City-I, Bombay. ...Applicant
V/s.
M/s.Bhor Industries Pvt.Ltd.,
293, Veer Savarkar Marg,
Bombay - 400 025. ...Respondent

Mr.A.N. Katangale with Mr.D.A. Dubey i/b. S. Bhattacharya for Applicant.
None for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : AUGUST 19, 2005.

ORAL JUDGMENT (PER V.C. DAGA, J.) :-

. By this reference under Section 256(1) of the Income Tax Act, the Tribunal has referred the following question of law for the opinion of this Court :-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing assessee's claim in respect of foreign travel expenses of Smt.L.R. Patel, who accompanied her husband Shri R.M. Patel, the director of the assessee company?"

Facts :

2. The factual matrix reveals that Shri R.M. Patel, one of the Directors of the assessee- company had undertaken foreign travel which was partly for the purposes of purchasing machinery and partly for export promotion. The assessing officer disallowed the whole expenditure. The learned Commissioner (Appeals) held that 1/5th of the expenditure on the travel of the Director was attributable to the purchase of the machinery and the balance was attributable to export promotion. He, accordingly, allowed 4/5th of the total expenditure as of revenue nature and the balance 1/5th was held to be as capital. The Tribunal found that the machinery sought to be purchased was for a new project which was yet to come up. The learned Commissioner's (Appeals) order did not show that the assessee had contended before him that the machinery was proposed to be purchased in connection with the existing line of business. On this finding of fact, the Tribunal held that no case had been made for its interference in so far as disallowance of 1/5th of the expenditure on the

travel of Shri R.M. Patel was concerned.

3. Shri R.M. Patel, during the course of his foreign travel, was accompanied by his wife Smt.L.R. Patel. It was claimed on behalf of the assessee that the foreign journey by the wife accompanying her husband on business tour, was also for the purposes of assessee's business. The Tribunal upheld this contention and held that the expenditure on travel of Smt. Patel on the foreign tour should be treated at par with that of her husband. Accordingly, Tribunal allowed 4/5th expenditure incurred on the foreign tour of Smt.Patel treating it as revenue expenditure.

4. The question of law reformed for opinion indicated in the opening part of this order, has arisen on the facts enumerated hereinabove.

Rival Contentions :

5. Learned Counsel appearing for the Revenue contends that the finding of fact has been recorded by

the Commissioner of Income-Tax (Appeals); wherein categorical finding has been recorded holding that the expenditure on travel of Smt. Patel was liable to be disallowed in toto because the appellant-assessee could not establish any business purpose behind her foreign travel.

6. Learned Counsel for the Revenue also contends that in view of above finding of fact recorded by the 1st Appellate Authority, Tribunal was not justified in allowing the 4/5th expenditure incurred on foreign tour of Smt.Patel treating it as of revenue expenditure. He, thus, submits that the above question referred at the instance of the Revenue should be answered in favour of the Revenue.

5. Per Contra, learned Counsel appearing for the respondent-assessee contends that this Court in **ITR No.56 of 1990 (Commissioner of Income Tax v/s. Alfa Laval (I) Ltd. (decided on 15th July, 2005) (unreported),** has allowed the similar type of expenditure holding that to be of revenue nature. He,

thus, submits that the findings recorded by the Tribunal are in accordance with law as such question referred to should be answered in favour of the assessee.

Consideration :

6. Having heard the rival parties, it is not in dispute that the Commissioner of Income-Tax (Appeals) has recorded a categorical finding that the expenditure on the travel of Mrs.Patel was not for the business purposes. The Tribunal could not have reversed its finding without holding that the finding to be erroneous with further finding that the expenditure on foreign tour of Mrs.Patel was incurred for the purposes of business of the assessee-company. It is no doubt true that this Court has allowed similar type of expenditure in the case of **Alfa Laval (cited supra)**. However, in that case, the Tribunal had recorded a clear cut finding of fact that the expenditure incurred on the foreign tour of the wife of the President of the assessee-company was for the purposes of business. In

view of this categorical finding of fact recorded by the authorities below, this Court had treated the expenditure on foreign travel of the wife of the Company's President as of revenue nature. In the case on hand, there is categorical adverse finding recorded by the Commissioner of Income-Tax (Appeals) that no business purpose was involved in the foreign tour of Mrs.Patel. Consequently, the expenditure incurred was rightly disallowed, in toto, by the Commissioner of Income-Tax (Appeals). The finding of fact recorded by the CIT (Appeals) was never set aside by the Tribunal. If foreign tour was not for the purposes of business, then it cannot be an allowable expenditure.

7. In the above view of the matter, the above question referred is answered in negative i.e. in favour of revenue and against the assessee.

. Reference, accordingly, stands disposed of with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**